IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 473 of 2003 (M/S)

M/s G.B. Pant University of Agriculture & Technology,
Farm Directorate, Eastern Zone,
Beni Block E, Pant Nagar,
District Udham Singh Nagar,
Through Chief General Manager (Farm). ..... Petitioner

Versus

Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub Regional Office, Abdulla Building,
Bareilly Road, Haldwani,
Nainital. ..... Respondent

Mr. Rajendra Dobhal, Advocate for the petitioner.
Mr. Ashok Aggarwal, Standing Counsel for the respondent.

Date: 1st August, 2006

Hon'ble Rajesh Tandon, J.

1. Heard Mr. Rajendra Dobhal, Advocate for the petitioner and Mr. Ashok Aggarwal, learned Standing Counsel for the respondent.

2. By means of this writ petition, the petitioner is seeking the following reliefs:

> "i issue a writ, order or direction in the nature of Certiorari calling for the record and quashing the impugned order dt. 30.4.2003 (Annexure No. 5 to this writ petition) passed by Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Sub Regional Office Abdulla Building, Bareilly Road, Haldwani, District Nainital – respondent levying the damages of Rs. 1,15,658.00.00 under section 14B and interest of Rs. 10,484.00 in total Rs. 1,26,142.00 under section 7Q of Employees Provident Fund and Misc. Provisions Act, 1952.

ii. pass any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

iii. award the cost of writ petition to the petitioner."

3. Mr. Ashok Aggarwal, the learned counsel for the respondent has raised a preliminary objection about the maintainability of the writ petition on the ground that the petitioner has an efficacious alternative statutory remedy against the impugned orders of filing an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

4. A similar controversy has already been decided by a Division Bench of the High Court in Writ Petition No. 447 of 2005 (M/B) vide judgment dated 22.6.2006, whereby this Court has declined to exercise its discretionary jurisdiction under Article 226 of the Constitution of India in view of the fact that the petitioner had an efficacious alternative remedy against the impugned orders of filing an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

5. As the petitioner has an efficacious alternative remedy against the impugned orders of filing an appeal under Section 7-I of the Act, I decline to entertain this writ petition under Article 227 of the Constitution of India.

6. However, with a view to protect the interest of the petitioner, who was pursuing the writ petition under the bonafide belief, I deem it proper to direct that on the petitioner's filing an appeal against the impugned order within a period of one month from the date of obtaining a certified copy of this order, the appellate authority shall entertain the appeal treating the same to have been filed within the prescribed period of limitation and shall consider and decide the same in accordance with law.

7. The learned counsel for the petitioner has submitted that the assessment amount along with interest has already been deposited by the petitioner and the respondent is also claiming damages, which will be deposited by the petitioner after the decision in the appeal. Hence, in the interest of justice, it is directed that the amount of damages shall not be recovered from the petitioner till the decision of his appeal.

8. Subject to the aforesaid directions, the writ petition is disposed of on the ground of alternative remedy.

(Rajesh Tandon, J.)

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